

## VOLVO CONSTRUCTION EQUIPMENT RENTS, INC.,

2:09-CV-32 JCM (LRL)

Plaintiff,

V.

&lt;divNRL RENTALS, LLC, et al.,

## Defendants.

## ORDER

Presently before the court is defendant Jefferson Bank's motion re-urging the motion to dismiss (doc. #328). (Doc. #374). Also before the court is plaintiff's motion to amend the complaint (doc. #374), contained within plaintiff's response to defendant's motion to dismiss.

## I. Motion to Dismiss

On January 5, 2011, this court granted plaintiff's motion for the district judge to reconsider the order on the motion to dismiss. (Doc. #391). At that time, the court vacated the December 2, 2010, order (doc. #372) insofar as it granted defendant Jefferson Bank's motion to dismiss, and provided an opportunity for the plaintiff to respond to the substance of the motion.

The plaintiff thereafter filed a response, requesting that it be given leave to amend its pleading. (Doc. #374). The plaintiff has still not responded to the substance of the motion to dismiss. Accordingly, the court grants defendant's motion re-urging the motion and dismisses the case without prejudice as to defendant Jefferson Bank.

1      **II. Motion to Amend Complaint**

2      Under Federal Rule of Civil Procedure 15, a plaintiff may, without leave of court, amend its  
3      complaint once within 21 days of service so long as the defendant has not filed an answer. When  
4      requested, leave to amend "shall be freely given when justice so requires." FED. R. CIV. P. 15(a). The  
5      local rules of federal practice in the District of Nevada qualify this rule, and require that a plaintiff  
6      submit a proposed, amended complaint along with a motion to amend. LR 15-1(a).

7      Here, plaintiff filed his first complaint on January 6, 2009. (Doc. #1). Plaintiff filed an  
8      amended complaint on September 15, 2009. (Doc. #127). Accordingly, plaintiff has properly  
9      requested leave to file a second amended complaint. However, as the plaintiff has failed to comply  
10     with the local rule by attaching a proposed, amended complaint, the motion must be denied at this  
11     time.

12     Accordingly,

13     IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Jefferson Bank's  
14     motion re-urging the motion to dismiss (doc. #328) is GRANTED. The case is dismissed as to  
15     defendant Jefferson Bank without prejudice.

16     IT IS FURTHER ORDERED that plaintiff's motion to amend the complaint (doc. #374) is  
17     hereby DENIED without prejudice.

18     DATED this 24th day of January, 2011.

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22     UNITED STATES DISTRICT JUDGE  
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